In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-476

DOMINIC CARZOLI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of having willfully endeavored to obstruct communication of information to federal agents by intimidation and threats, in violation of 18 U.S.C. 1510. He was sentenced to three years' imprisonment. The court of appeals affirmed (Pet. App. A).

The questions advanced in the petition (Pet. 2) are not presented by the facts. As the opinion of the court of appeals, upon which we rely, shows, there is no issue of failure to warn under *Miranda* v. *Arizona*, 384 U.S. 436, since the trial judge properly found that the agents had advised petitioner of his consti-

447-877—71

tutional rights prior to questioning him (Pet. App. A9). Similarly there is no issue as to use as substantive evidence of a prior statement by a witness; as the opinion below shows, the statement, in the form of an affidavit, was never introduced into evidence, and the judge instructed the jury that prior statements were not admissible for the truth of their content (Pet. App. A14). Petitioner does not challenge these facts; he merely omits to mention them.

It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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